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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,355

04/29/2004

Saad Ahmed Sirohey

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23413 7590 01/14/2009
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EXAMINER

MACKOWEY, ANTHONY M

ART UNIT

PAPER NUMBER

2624

NOTIFICATION DATE

DELIVERY MODE

01/14/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/709,355

Applicant(s)

SIROHEY ET AL.

Examiner

ANTHONY MACKOWEY

Art Unit

2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-7,9 and 11-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Matthew C Bella/
Supervisory Patent Examiner, Art Unit 2624

Continuation of 3. NOTE: The amendment to claim 1 incorporates the subject matter of previously filed claim 7. Claims 2-6 and 14 depended from claim 1, therefore the scope of these dependents has changed due to the inclusion of the subject matter of claim 7. claims 15, 17, 18 and 19, which did not have dependent claims with subject matter similar to claim 7, have also been amended to include the subject matter of claim 7. Claim 11 has been cancelled but claims 12 and 13 still recite dependency from claim 11. As these claims depend from a cancelled claim, the claims are therefore indefinite and raise a rejection under 35 USC 112, second paragraph. Therefore, the amendment to the claims requires further search and/or consideration because they change the scope of several of the claims and do not simplify issues for appeal because the amendment raises a new issue under 35 USC 112, second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been considered but are not persuasive. Applicant's remarks challenge the Examiner taking Official Notice with regard to optimization in a least squares sense. Official Notice was taken in the rejection of claim 7 in the first Non-Final Office action mailed May 1, 2007 (see pages 7 and 8). Applicant did not traverse examiner's taking of Official Notice in arguments submitted with the amendment filed July 2, 2007; arguments submitted with the amendment after final filed December 31, 2007 and entered in the RCE filed February 1, 2008; or in arguments submitted with the amendment filed November 3, 2008. Any previous arguments with regard to claim 7 merely asserted patentability by virtue of dependency from claim 1. As applicant did not traverse examiner's taking of Official Notice in any of the previously filed arguments, the subject matter was taken to be admitted prior art. The present traversal is not timely and should have been presented with the first amendment in response to the first Office action in which Official Notice was taken. Regardless of the timeliness of the traversal, applicant has requested the examiner produce a reference supporting examiner's taking of Official Notice that optimization in a least squares sense was known to one of ordinary skill in the art. Such a reference has already been made of record by the the examiner and was cited in the first Office action mailed May 1, 2007 (see page 20). Prior art reference, "Weighted Least Squares Method for the Approximation of Directional Derivatives" by Tico and Kuosmanen discloses optimization in a least squares sense to minimize error (see section 2 on pages 1681 and 1682).